

**Testimony of Kathryn Higgins,
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Before the Subcommittee on National Parks, Recreation and Public Lands
House Committee on Resources
on
H.R. 4103, the "Martin's Cove Land Transfer Act"

May 16, 2002**

Mr. Chairman and Members of the Subcommittee, on behalf of the 250,000 members of the National Trust for Historic Preservation, I would like to thank you for the opportunity to testify on H.R. 4103, the "Martin's Cove Land Transfer Act." It is my hope that my testimony today will clarify and expound upon the potential impact that H.R. 4103 could have on federal protections currently afforded to historic and cultural resources on public lands, which could be jeopardized once those lands are transferred to a private entity. H.R. 4103 proposes such a transfer of 1,640 acres of historically significant land to a private entity – the Church of Jesus Christ of Latter-Day Saints in Natrona County, Wyoming.

For the last 26 years, the Federal Land Policy and Management Act (FLPMA) has governed the disposition of public land tracts but has explicitly excepted lands that are of national significance — specifically units of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National System of Trails. In addition, the National Historic Preservation Act of 1966 and the National Environmental Policy Act of 1969 require that federal agencies take into account the impact of their actions prior to any transfer of public lands that include historic and cultural resources. The Martin's Cove land tract proposed for sale intersects portions of the National Historic Trails System which includes segments of the California, Oregon, Mormon and Pony Express Trails. The National Park Service's Comprehensive Plan/EIS of November 1999 has designated the portions of these trails, which are located in the proposed Martin's Cove tract, as containing "high potential segment" as defined by the National Trails Systems Act of 1968. This means that these areas undoubtedly contain a large number of archaeological and cultural resources associated both with the pioneer migration and the Native American presence on the land. We believe that the transfer and sale of the Martin's Cove tract would be unprecedented and in contravention of Congress' intent in enacting these laws, which have protected public lands for a generation.

We understand that land is often transferred out of federal ownership; in fact the Federal Land Policy and Management Act (FLPMA) sets forth procedures for the disposition of such lands. However, the law clearly states that if BLM were to make this transfer under its own authority, it would be required to ensure that protections for historic and cultural resources were in place. In addition, FLPMA clearly states that land within units of the National Wilderness Prevention System, National Wild and Scenic Rivers Systems, and National System of Trails should not be transferred. Because the transfer of Martin's Cove under H.R. 4103 would not follow this established federal policy, we urge Congress carefully review this sale to ensure that federal protections are not lost for this area, which has historical significance to the entire nation.

The National Trust recognizes the importance of the Martin's Cove site for the LDS Church as a historic site where 150 emigrants of the Willies and Martin handcart companies lost their lives in an early fall snowstorm in 1856, and understand the Church's interest in playing a role in interpreting the site. However, we also recognize that this area has a rich history of the western emigration movement for

Mormons and non-Mormons alike, as well as Native Americans who resided in this area well before western settlers arrived.

Western historians have noted that much of Wyoming history is a story about people who traveled across the state to get somewhere else. Most people traveled through the state on the California, Oregon, and Mormon trails. Collectively, their history is part of the larger story of the California gold rush, of farmers looking for a new life in the lush valleys of Oregon, and of the Mormon settlement of Utah. With few exceptions, their individual stories were never written down. Instead the only record of their journey is in the wheel ruts, the campsites, and their discarded artifacts of everyday life and their sacrifices marked by hastily dug gravesites along the trail.

Native Americans, who were there well before the western settlers, also traveled through this area attracted by the same amenities as the emigrants. For example, two archaeological sites that may be eligible for the National Register of Historic Places have been identified near Martin's Cove and it is likely that many more are yet to be discovered.

The opportunity to survey, identify, record and protect historic sites associated with Native American and western migration history could be lost if this land is transferred to the LDS Church without including the preservation provisions afforded under existing federal law. In addition, a perpetual easement should also be considered as part of the conveyance, which would allow for continued public access to this area. In a letter to Chairman Hansen dated May 3, the National Trust made it clear that while we do not object to the transfer *per se* to the LDS Church, we are concerned that the legislation, as currently written, would transfer this nationally significant historic area without also transferring the long-term legal protections for historic and cultural resources that now apply to this land because it is owned and managed by the federal government.

For example, the National Historic Preservation Act imposes obligations on federal agencies to ensure that activities on federal land fully address impacts on properties eligible for or listed on the National Register of Historic Places. Section 110 of the Act imposes a number of stewardship obligations on federal agencies including the responsibility to survey, identify, and evaluate historic properties under their control or ownership; to undertake the preservation of such properties under federal standards, consistent with agency mission requirements; to coordinate preservation related activities with state and local agencies and Indian Tribes; and to approve plans undertaken by transferees of federal property to see that historic and culturally significant values are preserved and enhanced.

Further, the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Resources Protection Act (ARPA), the American Indian Religious Freedom Act (AIRFA), and Executive Order 13007 also impose certain protections for archaeological and cultural resources. These protections apply to federal land stewards like the BLM, but would not apply to lands passed along to private owners unless by express requirement. For example, NAGPRA imposes certain obligations on BLM to take steps to protect Native American cultural items found on federal lands through intentional excavation or inadvertent discoveries, and establishes a process to repatriate human remains and associated Native American cultural items to the Indian Tribes. ARPA regulates access to archaeological resources on federal and Indian Lands and in essence forbids anyone from excavating or removing an archaeological resource from these lands without first obtaining a permit from the responsible land management agency.

Under AIRFA, a federal agency is obligated to consider, and consult with Tribes about anything that

might affect their religious practices. AIRFA is a call to recognize that religious practices, not just places, and certainly not just National Register eligible places, are “cultural resources” that need to be considered in planning. Executive Order 13007 deals explicitly with sacred sites and in short requires federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, to avoid adverse effects to the physical integrity of such sites, and to implement procedures to carry out the provisions of the order in a manner that respects the government-to-government relations between the U.S. government and Indian tribal governments.

Again, these legal protections would no longer be applicable once public land is transferred into private ownership, unless they are passed along to the grantee. Therefore, we would oppose any legislative transfer of Martin’s Cove that does not include such protections as a precondition to a sale of the land.

Should Congress decide to proceed with this transfer, the National Trust strongly recommends that H.R. 4103 be amended to include federal protections for cultural resources provided by the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, and the Archaeological Resources Protection Act. Because cultural resources cannot be properly protected until they are identified, it is also our view that any transfer legislation should require the BLM to complete a comprehensive cultural resource survey of the land as a precondition of any transfer. The BLM (or the recipient, subject to the agency’s approval) should also be required to prepare a comprehensive management plan that addresses issues relating to public access and interpretation of sites and takes into account the full range of historic and cultural resources in this area. Other interested parties — including state and local authorities and appropriate Native American Tribes — should be consulted throughout the process.

We believe that such protections can be incorporated into an easement or protective covenant that will run with the land when it is sold. Alternatively, we would also support a co-stewardship agreement between the federal land management agency and the LDS Church where lands would continue in public ownership, but would be privately managed with all federal protections intact, and consistent with the type of management plan noted earlier.

A precedent for transferring legal protections with federal lands occurred recently when land along the Missouri River was transferred from the Army Corps of Engineers to the State of South Dakota under Title VI of the Water Resources Development Act. The law specifically contained language that ensured the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archeological Resources Protection Act would continue to apply to the land upon transfer. This land contains a vast number of historic and cultural resources within the Missouri River basin in South Dakota. Historic and cultural sites include homesteads, trading posts, prehistoric villages, sites with fortifications, petroglyphs, historic forts and townsites, battle sites, sites visited by Lewis and Clark, and several prehistoric and historic cemeteries.

In sum, whether the recipient is a state agency or a private owner, the transfer of nationally significant historic lands from federal stewardship should not occur unless legal assurances are incorporated to see that the protections afforded to cultural resources would continue to apply after the land has been transferred. In addition, public access to this area should continue in perpetuity and must be included as part of any conveyance.

Finally, if this land is transferred, we would support the Department of the Interior's recommendation

that H.R. 4103 include a reversionary clause to the Federal government in order to ensure the site will be protected should the Church chose to discontinue ownership or falter in the management of the Martin's Cove property in the future.

Mr. Chairman, we look forward to working with you and the committee to address these concerns about this legislation. Thank you very much for the opportunity to provide testimony on H.R. 4103. This concludes my statement and I will be pleased to answer any questions you or the other members of the subcommittee may have on our views.